

EXHIBIT 9

Filed Under Seal

1 IN THE UNITED STATES DISTRICT COURT
2 DISTRICT OF MINNESOTA

3
4 CIVIL NO. 18-1776 (JRT/HB)
5 0:21-MD-02998-JRT-HB
6 MDL NO. 2998

7
8 IN RE: PORK ANTITRUST LITIGATION
9

10 This Document Relates to: All Actions
11
12

13 HIGHLY CONFIDENTIAL
14 REMOTE AND ORAL VIDEO
15 DEPOSITION OF TODD NEFF
16 July 15, 2022
17
18
19
20

21 REPORTED BY:
22 Angela Smith McGalliard
23 Certified Realtime Reporter
24 Registered Professional
25 Reporter and Notary Public

1 producers of various sizes.

2 Q. And what about earlier in the
3 time period, around 2009, how many
4 different hog producers did Tyson obtain
5 hogs from?

6 MS. SCARLETT: Objection to form.

7 A. Still would have been in the
8 hundreds, if not -- you know, I know at one
9 time I believe it was over a couple
10 thousand entities that we did -- that we --
11 independent entities that we did business
12 with.

13 Q. Did Tyson have long-term
14 contracts with many of its larger hog
15 suppliers?

16 MR. KAPLAN: Objection.

17 MS. SCARLETT: Objection to form.

18 A. The length of contracts would
19 vary but we had contracts that -- a lot of
20 contracts that were in excess of twelve
21 months, some in excess of eighteen months,
22 some in excess of twenty-four months. Some
23 of the smaller guys, really small
24 suppliers, we oftentimes would have, you
25 know, agreements less than that. But it

1 was not uncommon to have long-term
2 contracts. And I'll just state, you know,
3 twelve months or longer was very common.

4 Q. And did those contracts that
5 Tyson had with independent hog suppliers
6 obligate Tyson to purchase a set number of
7 hogs?

8 MS. SCARLETT: Objection to form.

9 A. So, yeah. Each party entered
10 into the agreement on their own accord.
11 And we would strive to either set a
12 specific number of hogs on an annual basis,
13 that the independent hog supplier was to
14 deliver, or there were some contracts that
15 were written as 100 percent of their
16 supply. And in those cases, we would try
17 to set a range of expected -- you know
18 expected volume. Because, again, dealing
19 with live animals and all the issues that
20 can impact the number of live animals,
21 you'd have to have a little bit of a range,
22 but that's -- that's usually how those were
23 written.

24 Q. Was Tyson free to decline to
25 purchase hogs that it contracted to

1 purchase from any given hog producer during
2 the term of the relevant contract?

3 MS. SCARLETT: Objection to form.

4 A. Could you repeat that again,
5 please, Lindsey?

6 Q. Sure. Was Tyson free to decline
7 to purchase hogs that it contracted for
8 with any given hog producer during the term
9 of the contract?

10 MS. SCARLETT: Objection. Form.

11 A. Outside of a force majeure event,
12 a plant that, you know, had a fire or that
13 PED virus -- excuse me, the coronavirus
14 event that happened a couple, three years
15 ago, outside of a force majeure event, the
16 answer to that is no. Our obligation to
17 uphold our end of the contract was that we
18 had to take delivery and we had to harvest
19 those animals.

20 Q. Pursuant to its contract with hog
21 producers, does Tyson gain any ownership
22 interest in those companies?

23 MS. SCARLETT: Objection to form.

24 A. No. None whatsoever. They're --
25 All of the decisions that those suppliers

1 would make, they were free to run their
2 business as they saw best for their -- you
3 know, for their business. So, no, we did
4 not have -- we did not have ownership.

5 Q. Do hog producers have options
6 when it comes to who to sell their hogs to?

7 MS. SCARLETT: Objection to form.

8 A. Similar to the answer I gave,
9 yeah. Their -- Decisions on how many hogs
10 they wanted to produce and who they wanted
11 to sell those hogs to. And quite frankly,
12 what price discovery mechanism they wanted
13 to use, that was -- that was up to -- up to
14 the independent hog supplier.

15 MR. KAPLAN: I'm going to also
16 object. I think this goes beyond the scope
17 of the direct. But that's for the Record.

18 Q. During the period from 2009 to
19 2018, was it rare for multiple packers to
20 compete for hog supply from the same hog
21 producers?

22 MS. SCARLETT: Objection to form.

23 A. It was not -- It was not rare for
24 -- when I was there, for Tyson to compete
25 against others -- other packers for hog

1 didn't have that power. We didn't have
2 that influence. I mean, it -- That
3 decision had to be made by that hog
4 supplier.

5 Q. What are some of the reasons that
6 a hog producer might refuse to add more
7 sows, even though a packer, such as Tyson,
8 wanted to buy more hogs from them?

9 MS. SCARLETT: Objection to form.

10 A. There could be some -- several
11 scenarios that I could think of. First and
12 foremost, what kind of financial returns
13 the hog producer had been experiencing;
14 labor became more and more of a challenge,
15 and having enough labor to be able to
16 handle a larger operation was certainly a
17 consideration; age of facilities; you know,
18 the availability of feed stuffs, of corn,
19 and the price of those feed stuffs. That's
20 just to name a few of the reasons.

21 Q. Okay. Now I want to switch gears
22 to talk a bit about what was going on in
23 the hog market around 2009. Do you
24 generally recall that time period?

25 A. Generally, yes; specifically, not

1 so much. But, generally, yes.

2 Q. What do you remember about how
3 hog producers were faring during that time?

4 MR. KAPLAN: Objection.

5 MS. SCARLETT: Objection to form.

6 A. I know that it was an extremely
7 difficult time financially for hog
8 producers. I believe ethanol surge was
9 going on, which created a competing market
10 for corn and raised corn prices
11 significantly higher than they had
12 historically been; there was a virus that
13 was nicknamed swine flu, which created
14 demand challenges for pork, both
15 domestically and from some export
16 countries.

17 What I recall, my experience at
18 that time frame was, that in 2010, we
19 harvested significantly fewer animals
20 versus 2008, as a company and as an
21 industry. And I think that was a direct
22 correlation of how difficult it was for hog
23 producers.

24 Q. Did Tyson require its independent
25 hog suppliers to cut back their hog

1 production during this time?

2 MS. SCARLETT: Objection. Form.

3 A. No. In fact -- In fact, my
4 recollection, in my time with Tyson, is,
5 generally, our results were better when we
6 had a robust or, you know, abundant supply
7 of hogs. So I can't think of a scenario --
8 I can't think of a scenario where we would
9 want fewer hogs.

10 Q. During your tenure with Tyson,
11 were you ever involved in an agreement with
12 Tyson's competitors to set pork production
13 for supply levels?

14 MR. KAPLAN: Objection.

15 MS. SCARLETT: Objection to form.

16 A. No.

17 Q. Are you aware of anyone else at
18 Tyson ever having been involved in such an
19 agreement?

20 MR. KAPLAN: Objection.

21 MS. SCARLETT: Objection to form.

22 A. No.

23 Q. Were you ever involved in an
24 agreement with Tyson's competitors to set
25 hog production or supply levels?

1 MS. SCARLETT: Objection to form.

2 A. No.

3 Q. Are you aware of anyone else at
4 Tyson ever having been involved in such an
5 agreement?

6 MS. SCARLETT: Objection to form.

7 A. No. I'm not aware of any such
8 agreement from anyone else within Tyson.

9 Q. Were you ever involved in an
10 agreement with Tyson's competitors to set
11 or fix pork prices?

12 MS. SCARLETT: Objection to form.

13 A. No.

14 Q. Are you aware of anyone else at
15 Tyson ever having been involved in such an
16 agreement?

17 MS. SCARLETT: Objection.

18 A. Pardon me. I am not.

19 Q. And did you ever exchange
20 competitively sensitive information with
21 any competitor of Tyson to facilitate an
22 agreement between Tyson and its competitors
23 to reduce the supply of pork?

24 MS. SCARLETT: Objection to form.

25 A. No.